

§ 17.43

50 CFR Ch. I (10–1–15 Edition)

take occurs on non-Federal land and is incidental to activities pertaining to construction, continued use, and maintenance of stock tanks. A stock tank is an existing or future impoundment in an ephemeral drainage or upland site constructed primarily as a watering site for livestock.

[42 FR 2076, Jan. 10, 1977, as amended at 43 FR 32809, July 28, 1978; 44 FR 59084, Oct. 12, 1979; 45 FR 17589, Mar. 19, 1980; 45 FR 78154, Nov. 25, 1980; 48 FR 46336, Oct. 12, 1983; 50 FR 25678, June 20, 1985; 50 FR 45409, Oct. 31, 1985; 52 FR 21063, June 4, 1987; 52 FR 42662, Nov. 6, 1987; 55 FR 12191, Apr. 2, 1990; 61 FR 32366, June 24, 1996; 62 FR 59622, Nov. 4, 1997; 65 FR 25879, May 4, 2000; 72 FR 48446, Aug. 23, 2007; 78 FR 38190, June 25, 2013; 79 FR 38746, July 8, 2014]

§ 17.43 Special rules—amphibians.

(a) San Marcos salamander (*Eurycea nana*). (1) All provisions of § 17.31 apply to this species, except that it may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

(b) Chiricahua leopard frog (*Lithobates chiricahuensis*).

(1) *What activities are prohibited?* Except as noted in paragraph (b)(2) of this section, all prohibitions of § 17.31 will apply to the Chiricahua leopard frog.

(2) *What activities are allowed on private, State, or Tribal land?* Incidental take of the Chiricahua leopard frog will not be considered a violation of section 9 of the Act, if the take results from livestock use at or maintenance activities of livestock tanks located on private, State, or Tribal lands. A livestock tank is defined as an existing or future impoundment in an ephemeral drainage or upland site constructed primarily as a watering site for livestock.

(c) California tiger salamander (*Ambystoma californiense*).

(1) *Which populations of the California tiger salamander are covered by this special rule?* This rule covers the California tiger salamander (*Ambystoma californiense*) rangewide.

(2) *What activities are prohibited?* Except as noted in paragraph (c)(3) of this section, all prohibitions of § 17.31 will apply to the California tiger salamander.

(3) *What activities are allowed on private or Tribal land?* Incidental take of the California tiger salamander will not be a violation of section 9 of the Act, if the incidental take results from routine ranching activities located on private or Tribal lands. Routine ranching activities include, but are not limited to, the following:

(i) Livestock grazing according to normally acceptable and established levels of intensity in terms of the number of head of livestock per acre of rangeland;

(ii) Control of ground-burrowing rodents using poisonous grain according to the labeled directions and local, State, and Federal regulations and guidelines (The use of toxic or suffocating gases is not exempt from the prohibitions due to their nontarget-specific mode of action.);

(iii) Control and management of burrow complexes using discing and grading to destroy burrows and fill openings;

(iv) Routine management and maintenance of stock ponds and berms to maintain livestock water supplies (This exemption does not include the intentional introduction of species into a stock pond that may prey on California tiger salamander adults, larvae, or eggs.);

(v) Routine maintenance or construction of fences for grazing management;

(vi) Planting, harvest, or rotation of unirrigated forage crops as part of a rangeland livestock operation;

(vii) Maintenance and construction of livestock management facilities such as corrals, sheds, and other ranch outbuildings;

(viii) Repair and maintenance of unimproved ranch roads (This exemption does not include improvement, upgrade, or construction of new roads.);

(ix) Discing of fencelines or perimeter areas for fire prevention control;

(x) Placement of mineral supplements; and

(xi) Control and management of noxious weeds.

(d) California red-legged frog (*Rana aurora draytonii*)—(1) *Which populations of the California red-legged frog are covered by this special rule?* This rule covers the California red-legged frog (*Rana aurora draytonii*) rangewide.

(2) *What activities are prohibited?* Except as noted in paragraph (d)(3) of this section, all prohibitions of §17.31 will apply to the California red-legged frog.

(3) *What activities are allowed on private or Tribal land?* Incidental take of the California red-legged frog will not be a violation of section 9 of the Act, if the incidental take results from routine ranching activities located on private or Tribal lands. Routine ranching activities include, but are not limited to, the following:

(i) Livestock grazing according to normally acceptable and established levels of intensity in terms of the number of head of livestock per acre of rangeland;

(ii) Control of ground-burrowing rodents using poisonous grain according to the labeled directions and local, State, and Federal regulations and guidelines (In areas where California red-legged frogs and California tiger salamanders coexist, the use of toxic or suffocating gases is not exempt from the prohibitions due to their nontarget-specific mode of action.);

(iii) Control and management of burrow complexes using discing and grading to destroy burrows and fill openings (This exemption does not apply to areas within 0.7 mi (1.2 km) of known or potential California red-legged frog breeding ponds.);

(iv) Routine management and maintenance of stock ponds and berms to maintain livestock water supplies (This exemption does not include the intentional introduction of species into a stock pond (including non-native fish and bullfrogs) that may prey on California red-legged frog adults, larvae, or eggs.);

(v) Routine maintenance or construction of fences for grazing management;

(vi) Planting, harvest, or rotation of unirrigated forage crops as part of a rangeland livestock operation;

(vii) Maintenance and construction of livestock management facilities such as corrals, sheds, and other ranch out-buildings;

(viii) Repair and maintenance of unimproved ranch roads (This exemption does not include improvement, upgrade, or construction of new roads.);

(ix) Discing of fencelines or perimeter areas for fire prevention control;

(x) Placement of mineral supplements; and

(xi) Control and management of noxious weeds.

(e) Georgetown salamander (*Eurycea naufragia*.)

(1) *Prohibitions.* Except as noted in paragraph (e)(2) of this section, all prohibitions and provisions of §§17.31 and 17.32 apply to the Georgetown salamander.

(2) *Exemptions from prohibitions.* Incidental take of the Georgetown salamander will not be considered a violation of section 9 of the Act if the take occurs on non-Federal land from regulated activities that are conducted consistent with the water quality protection measures contained in chapter 11.07 and Appendix A of the City of Georgetown (Texas) Unified Development Code (UDC), as endorsed by the U.S. Fish and Wildlife Service.

[40 FR 44415, Sept. 26, 1975, as amended at 45 FR 47363, July 14, 1980; 67 FR 40811, June 13, 2002; 69 FR 47248, Aug. 4, 2004; 71 FR 19293, Apr. 13, 2006; 77 FR 16375, Mar. 20, 2012; 80 FR 47428, Aug. 7, 2015]

§ 17.44 Special rules—fishes.

(a) Lahontan cutthroat trout, Paiute cutthroat trout, and Arizona trout (*Salmo clarki henshawi*, *Salmo clarki seleniris*, and *Salmo apache*). (1) All the provisions of §17.31 apply to these species, except that they may be taken in accordance with applicable State law.

(2) Violation of State law will also be a violation of the Act.

(b) Bayou darter (*Etheostoma rubrum*). (1) All the provisions of §17.31 apply to this species, except that they may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

(c) Slender chub (*Hybopsis cahni*), spotfin chub (*Erimonax monachus*), slackwater darter (*Etheostoma boschungii*), and yellowfin madtom (*Noturus flavipinnis*). (1) All the provisions of §17.31 apply to these species, except that they may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

(d) Leopard darter (*Percina pantherina*). (1) All provisions of §17.31 apply to this species, except that it